
**THE CITY OF BLUE ISLAND
COOK COUNTY, ILLINOIS**

**RESOLUTION
NUMBER 2023- 044**

**A RESOLUTION OF THE CITY OF BLUE ISLAND,
COOK COUNTY, ILLINOIS, TO APPROVE AND AUTHORIZE
A DESIGN-BUILD AGREEMENT WITH BURKE LLC FOR
OLDE WESTERN STREETScape STAGE 1.5**

**FRED BILOTTO, Mayor
RAEANN CANTELO-ZYLMAN, City Clerk
JAIRO FRAUSTO, City Treasurer**

**DEXTER JOHNSON
LUIZ MONTOYA
NANCY RITA
BILL FAHRENWALD
GABRIEL McGEE
CANDACE CARR
JOSH ROLL**

Alderman

RESOLUTION NUMBER 2023- 044

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COOK COUNTY, ILLINOIS, TO APPROVE AND AUTHORIZE A DESIGN-BUILD
AGREEMENT WITH BURKE LLC FOR OLDE WESTERN STREETScape STAGE 1.5**

WHEREAS, the City of Blue Island, Cook County, Illinois (the “City”) is a duly organized and existing City created under the provisions of the laws of the State of Illinois and operating under the provisions of the Illinois Municipal Code, and all laws amendatory thereof and supplementary thereto, with full powers to enact ordinances and adopt resolutions for the benefits of the residents of the City; and

WHEREAS, the City of Blue Island and Burke LLC desire to execute an agreement for professional engineering services for the Olde Western Streetscape Stage 1.5 Project, a copy of which are attached hereto and made a part hereof as Exhibit A (the “*Agreement*”); and

WHEREAS, the Mayor and Aldermen of the City of Blue Island may, by a vote of two-thirds of the Aldermen then holding office, waive the requirement of the City Code and state law to publicly advertise and solicit competitive bids for a purchase or services or public improvements that exceed twenty-five thousand dollars (\$25,000.00) or more; and

WHEREAS, the City, in compliance with 65 ILCS 5/8-9-1 of the Illinois Municipal Code, desires to waive competitive bidding by a passing vote of two-thirds; and

WHEREAS, the City has the authority to enter into professional service agreements for engineering services pursuant to the Local Government Professional Services Selection Act, 50 ILCS 510/1 *et seq* (the “Act”); and

WHEREAS, the City has a satisfactory relationship with Burke, LLC. and Burke LLC has significant experience and extensive supplies stemming from their work on Phase 1 of the Streetscape project; and

WHEREAS, the Mayor and Aldermen of the City of Blue Island deem it advisable and in the best interests of the health, safety and welfare of the residents to utilize Burke LLC for the Olde Western Streetscape Project, Phase 1.5, based on their experience and knowledge in relation to the same.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the Aldermen of the City of Blue Island, Cook County, Illinois as follows:

Section 1. That the above recitals and legislative findings are found to be true and correct and are hereby incorporated herein and made a part hereof, as if fully set forth in their entirety.

Section 2. The Agreement, which is attached hereto and made a part hereof as Exhibit A, is hereby approved in substantially the same form presented to the Mayor and Aldermen of the City with such necessary non-material changes as may be authorized by the Mayor and City Attorney

Section 3. The officials and officers of the City are hereby authorized to undertake actions on the part of the City as contained in the Proposals to complete satisfaction of the provisions, terms or conditions stated therein.

Section 4. If any section, paragraph, clause or provision of this Resolution shall be held invalid, the invalidity thereof shall not affect any other provision of this Resolution.

Section 5. All ordinances, resolutions, motions or orders in conflict with this Resolution are hereby repealed to the extent of such conflict.

Section 6. This Resolution shall be in full force and effect immediately upon its passage, approval, and publication as required by law.

ADOPTED this 12th day of DECEMBER, 2023, pursuant to roll call as follows:

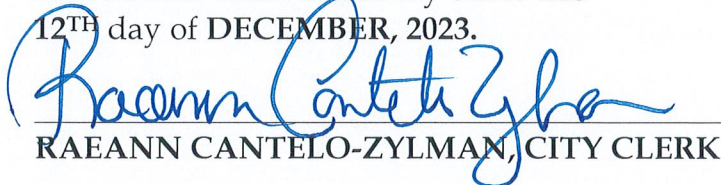
	YES	NO	ABSENT	PRESENT	ABSTAIN
Alderman JOHNSON			X		
Alderman FAHRENWALD	X				
Alderman RITA	X				
Alderman MONTOYA	X				
Alderman MCGEE	X				
Alderman CARR	X				
Alderman ROLL	X				
Mayor BILOTTO					
	6		1		

APPROVED by the Mayor on DECEMBER 12, 2023.



FRED BILOTTO
MAYOR OF THE CITY OF BLUE ISLAND,
COUNTY OF COOK AND STATE OF ILLINOIS

ATTESTED and Filed in my office this
12TH day of DECEMBER, 2023.



RAEANN CANTELO-ZYLMAN, CITY CLERK

STATE OF ILLINOIS)
)
COUNTY OF COOK)

 ss.

CERTIFICATION

I, RAEANN CANTELO-ZYLMAN, DO HEREBY CERTIFY THAT I am the duly elected City Clerk of the City of Blue Island, Illinois, as such City Clerk, I am the keeper of the minutes and records of the Proceedings of the City Council of the said City and have in my custody the RESOLUTIONS and BOOKS of the records of said City.


I DO FURTHER CERTIFY that the attached and foregoing is a true and correct copy of the certain **RESOLUTION: A RESOLUTION OF THE CITY OF BLUE ISLAND, COOK COUNTY, ILLINOIS, TO APPROVE AND AUTHORIZE A DESIGN-BUILD AGREEMENT WITH BURKE LLC FOR OLDE WESTERN STREETSCAPE STAGE 1.5.**

RESOLUTION NO. 2023-044 which was adopted at a regular meeting of the City Council of the City of Blue Island, Illinois held on the **12th of December, 2023**; that at said meeting **6** Alderman were present; that at said meeting, on motion duly made and seconded that the Resolution did pass and on the roll being called the vote of each Aldermen present on the question of the passage of said Resolution was duly and separately taken by Ayes and Nays and their names and votes recorded in the minutes of **6** Alderman voted Aye and **0** Alderman voted Nay and **0** Alderman voted Abstain and **1** Alderman Absent.

I DO FURTHER CERTIFY that the original Resolution which the foregoing is a true copy, is entrusted to my care for safe keeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the City of Blue Island aforesaid, at the said City in the County and State aforesaid, this **12th** day of **December, 2023**.

CORPORATE SEAL



City Clerk

Exhibit A
Agreement



DESIGN-BUILD AGREEMENT

(Lump Sum)

CONTRACT

This Contract is made this _____ day of _____ in the year 2023, by and between the

OWNER: City of Blue Island
13051 Greenwood Ave
Blue Island, IL 60406

CONTRACTOR: Burke LLC
9575 West Higgins Road
Suite 600
Rosemont, Illinois 60018

for services in connection with the following:

PROJECT: Olde Western Streetscape Stage 1.5

CONTRACT PRICE: \$ 2,749,120.00

DATE OF SUBSTANTIAL COMPLETION: November 15, 2024

**ARTICLE 1
STRUCTURE OF THE RELATIONSHIP**

- 1.1 RELATIONSHIP OF THE PARTIES.** The relationship between the Owner and the Contractor shall be one of good faith and fair dealing. The Contractor agrees to provide the professional services set forth below, and to furnish construction and administration of the Work so that the Project will be completed in accordance with the terms of this Contract and within the Contract Price ("Contract Price"). The Owner agrees to permit reasonable substitutions and design modifications that are consistent with the program for the Project and in compliance with applicable governmental requirements in order to permit the Project to be completed on time and within the Contract Price.
- 1.2 PROFESSIONAL SERVICES.** The Contractor shall provide the services of engineers, as may be required for the Project, either through Christopher B. Burke Engineering, Ltd., an engineering firm affiliated with the Contractor, or by contracting with an independent design firm. All such engineers shall be appropriately licensed. The Owner shall be responsible for procuring or for reimbursing the Contractor by Change Order for other professional services not within the scope of the Contractor's Work.

THE CONTRACT DOCUMENTS. The Contract Documents consist of:

- 1.2.1 Change Orders and written amendments to this Contract signed by both the Owner and Contractor;
 - 1.2.2 This Contract;
 - 1.2.3 Surveys, geo-technical information and other information provided by the Owner pursuant to this Contract;
 - 1.2.4 The Plans and Specifications, including any Addenda thereto. Concept exhibit prepared by CBBEL, dated November 27, 2023.
- 1.3** In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

The Work. The Work consists of all of the design and construction services to be performed by the Contractor and the Subcontractors under this Contract, as well as any other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

**ARTICLE 2
CONTRACTOR'S RESPONSIBILITIES**

- 2.1 DESIGN PHASE SERVICES.** The Contractor shall be responsible for timely completing the design and creating the Construction Documents. The Contractor shall exercise reasonable professional skill and judgment in the performance of its professional services.
- 2.1.1** During the Design Phase, the Contractor shall refine and develop the Design Criteria Documents into the Construction Documents. During this process, at the request of the Owner, the Contractor shall timely meet with the Owner to advise

the Owner in general of the progress of the design and to obtain any decisions or approvals needed from the Owner.

- 2.1.2** The Contractor shall submit for the Owner's written approval (a) the Construction Documents based on the approved Design Criteria Documents, and (b) the Schedule of the Work. The Construction Documents shall set forth the requirements for construction of the Work, and shall consist of drawings and specifications that comply with and have the level of detail required by the applicable codes, laws or regulations enacted at the time of their preparation. One set of these documents shall be furnished to the Owner prior to commencement of construction. The Construction Documents shall remain the property of the Contractor and may not be used by the Owner on other projects or for the completion of this Project by others so long as the Contractor is not in default on the Project. Upon completion of the restoration of the oasis connector, as-built drawings will be provided to the Owner both in a CAD-compatible electronic format and as a hard copy.

2.2 CONSTRUCTION PHASE SERVICES

- 2.2.1** The Contractor shall provide all necessary construction observation, construction equipment, labor, materials, tools, and subcontracted items necessary to complete all of the Work described in Construction Documents, except to the extent specifically assigned to be the responsibility of others.
- 2.2.2** The Contractor shall give all notices and comply with the pertinent laws and ordinances legally enacted at the date of execution of the Contract which govern the proper performance of the Work.
- 2.2.3** The Contractor's preliminary Schedule of the Work is attached as Exhibit A, and the Contractor shall prepare and submit a final Schedule of the Work within ten (10) days of the execution of this Contract. In the absence of objection by the Owner, the Schedule of the Work shall be deemed approved. This Schedule shall indicate the dates for the start and completion of the various stages of the construction including the dates when information and approvals are required from the Owner, including commencement of the site grading upon receipt of required permits. It shall be revised as required by the conditions of the Work.
- 2.2.4** The Contractor shall secure, at its cost, the building permits and other permits and governmental fees, licenses and inspections necessary for the construction of the Project. However, the Contractor shall not be liable for permitting delays caused by the permitting authority. The Contractor shall apply for all such permits within seven (7) days of execution hereof and pursue same to issuance with due diligence.
- 2.2.5** The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.
- 2.2.6** The Contractor shall cause its Subcontractors to take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. The Contractor, through its Subcontractors, shall erect and properly maintain at all times, as

required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. The Contractor, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project site carried on by the Owner or its employees, agents, separate contractors or tenants. The Owner agrees to cause its employees, agents, separate contractors and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

- 2.2.7** The Contractor shall keep such accounts as may be necessary for proper financial management under this Contract. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Contract to the extent required for enforcement of this Contract. The Contractor shall preserve all such records for a period of two years after the final payment, or longer where required by law.
- 2.2.8** The Contractor shall provide weekly written reports to the Owner on the progress of the Work as agreed to by the Owner and Contractor.
- 2.2.9** Progress meetings will be held on a weekly or as-needed basis so that the appropriate parties can discuss the status of the Work.
- 2.2.10** The Contractor shall develop a system of cost reporting for the Work, including regular monitoring of costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the Owner at mutually agreeable intervals on a weekly or as-needed basis.
- 2.2.11** At all times the Contractor shall maintain the site of the Work reasonably free from debris and waste materials resulting from the Work. At the completion of the Work, the Contractor shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris generated by the Contractor or its sub-contractors.
- 2.3 CONTRACT PRICE.** The Contract Price for the Work is set forth on the cover page of this Contract. With the completed Construction Documents, the Contractor shall submit to the Owner in writing the basis of the Contract Price, including to the extent applicable a list of the drawings, specifications and any modifications thereto; a list of assumptions or clarifications.
- 2.4 PRE-EXISTING HAZARDOUS MATERIAL.** Pre-existing hazardous materials are solely the Owner's responsibility. The Contractor shall immediately stop work in any area affected by pre-existing hazardous materials until the Owner has abated the situation to both parties' mutual satisfaction, and the Contract Price and Date of Substantial Completion shall be equitably adjusted by Change Order. The Owner shall defend, indemnify and hold harmless the Contractor and its subcontractors from and against any and all claims, damages, losses and expenses, including attorney's fees, relating to the pre-existing hazardous materials.
- 2.5 TAX EXEMPTION.** If, in accordance with the Owner's direction, an exemption is claimed for taxes, the Owner agrees to defend, indemnify and hold the Contractor

harmless from any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Contractor as a result of any action taken by the Contractor in accordance with the Owner's direction.

2.6 WARRANTIES

- 2.6.1** The Contractor warrants that all materials and equipment furnished under the Construction Phase of this Contract will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work. The Contractor agrees to promptly correct all construction performed under this Contract which is defective in workmanship or materials within a period of one year from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.
- 2.6.2** Those products, equipment, systems or materials incorporated in the Work by or through Owner shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. All other warranties expressed or implied including the warranty of merchantability and the warranty of fitness for a particular purpose are expressly disclaimed.
- 2.6.3** The Contractor shall secure required certificates of inspection, testing or approval and all written warranties and equipment manuals as required in the Contract Documents.
- 2.6.4** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.
- 2.6.5** The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- 2.6.6** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

OTHER WARRANTIES. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

- 2.7 SUBCONTRACTS.** Work not performed by the Contractor with its own forces shall be performed by Subcontractors. The Contractor shall not retain any Subcontractor to whom the Owner has a reasonable and timely objection. The Contractor shall not be required to retain any Subcontractor to whom the Contractor has a reasonable objection. The Contractor shall be responsible for the management of the Subcontractors in the performance of their work.
- 2.8 SUBCONTRACTUAL RELATIONS.** By written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward

the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner.

ARTICLE 3 OWNER'S RESPONSIBILITIES

- 3.1 INFORMATION.** The Owner shall provide full information in a timely manner regarding its requirements for the Project, including:
- 3.1.1** All necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
 - 3.1.2** Inspection and testing services during construction as required by the law or as mutually agreed;
 - 3.1.3** Any necessary approvals, rezoning, easements and assessments, permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including any legal and other required services, except as may be required of the Contractor pursuant to Section 2.2.4 of this Contract; and
 - 3.1.4** any other information or services stated in the Contract Documents as being provided by the Owner.

The Contractor shall be entitled to rely on the completeness and accuracy of the information and services required of the Owner in this Section, and the Owner agrees to provide such information and services in a timely manner so as not to delay the Work..

- 3.2 REVIEW AND APPROVAL.** The Owner shall review and timely approve schedules, estimates, Preliminary Design Documents, and Construction Documents furnished by the Contractor.
- 3.3 NOTICE OF DEFECT.** If the Owner becomes aware of any error, omission or other inadequacy in the Contract Documents or of the Contractor's failure to meet any of the requirements of the Contract Documents, or of any other fault or defect in the Work, the Owner shall give prompt written notice to the Contractor; however, the Owner's failure to provide notice shall not relieve the Contractor of its obligations under this Contract.
- 3.4 COMMUNICATIONS.** The Owner shall communicate with the Contractor's Subcontractors, vendors and Architect/Engineer only through the Contractor. The Owner shall have no contractual obligations to Subcontractors, vendors or the Architect/Engineer..
- 3.5 FINANCING.** The Owner shall provide reasonable evidence satisfactory to the Contractor, prior to commencing the Work and upon request during the progress of the Work, that sufficient funds are available and committed for the entire cost of the Project, including an allowance for changes in the Work as may be approved in the course of the Work. Unless such reasonable evidence is provided, the Contractor shall not be required to commence or continue the Work. The Contractor may stop Work after fourteen (14) days written notice to the Owner if such evidence is not presented within a reasonable time.
- 3.6 OWNER'S REPRESENTATIVE.** The Owner shall appoint a representative subject to the Contractor's reasonable approval. The representative:

- 3.6.1 shall be fully acquainted with the Project;
- 3.6.2 shall perform the duties required of the Owner so as not to delay or to increase the cost of the Contractor's Work; and
- 3.6.3 shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice.

If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Contractor in advance in writing. The Contractor shall have the right to approve any successor representative.

ARTICLE 4 COMPLETION

- 4.1 **COMMENCEMENT.** The Date of Commencement of the Work shall be the date on which this Contract is signed by both parties. The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended by mutual agreement from time to time subject, however, to Change Orders as provided in this Contract. Time shall be of the essence of this Contract.

SUBSTANTIAL COMPLETION. The date of Substantial Completion of the Work shall be the Completion Date set forth on the cover page of this Contract. "Substantial Completion" shall be defined as the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

- 4.2 **DELAYS IN THE WORK.** If causes beyond the Contractor's control delay the progress of the Work, then the Contract Price upon mutual agreement of the parties, the Contractor's Fee and/or the date of Substantial Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the Owner or separate contractors employed by the Owner, the Owner preventing the Contractor from performing the Work, delays caused by the permitting authority, Hazardous Materials, differing site conditions, unusually inclement weather conditions, fire, unanticipated transportation delays, labor disputes, or unavoidable accidents or circumstances. In the event delays to the Project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

ARTICLE 5 PAYMENT

- 5.1 **INITIAL PAYMENT.** Upon execution of this Contract, the Owner shall make an initial payment of \$0.00 to the Contractor within seven (7) days. The amount of the initial payment shall be credited to the Owner's account at Final Payment.
- 5.2 **CONTRACTOR'S COMPENSATION.** The Owner shall pay the Contractor the Contract Price for work performed.

PROGRESS PAYMENTS

- 5.2.1 On the 15th day of each month, the Contractor shall submit to the Owner an Application for Payment consisting of the percentage of the Contract Price corresponding to the percentage completion of the Work performed up to the

30th day of the prior month, including design costs and the cost of material stored on the site or at other locations approved by the Owner.

- 5.2.2** Within thirty (30) days after receipt of each monthly Application for Payment, the Owner shall pay directly to the Contractor the appropriate amount for which Application for Payment is made and for which Work referenced therein has been accepted by Owner, less amounts previously paid by the Owner, and less retention in the amount of ten (10%) percent.
- 5.2.3** If the Owner fails to pay the Contractor in a timely manner, then the Owner shall be deemed in default hereunder, unless such failure is cured by Owner not later than seven (7) days after Contractor gives written notice to the Owner of said default.
- 5.2.4** The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Contractor free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens."
- 5.2.5** The Owner's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.
- 5.2.6** Within thirty (30) days after certification of Substantial Completion, as accepted by the Owner, the Owner shall pay the Contractor the unpaid balance of the Contract Price, less a sum equal to the Contractor's estimated cost of completing any items that the Owner and Contractor agree are unfinished and the retention shall be reduced to five (5) percent of the Cost of the Work. The Owner thereafter shall pay the Contractor monthly the amount retained for unfinished items as each item is completed, less retention.
- 5.2.7** 5.2.7 Within thirty (30) days after Final Completion of the Work, as accepted or confirmed by the Owner, including any and all punch list items, the Owner shall pay the Contractor the unpaid balance of the Contract Price including retention.

5.3 FINAL PAYMENT

- 5.3.1** Final payment, consisting of the unpaid balance of the Contract Price, less the initial payment made under Paragraph 5.1, shall be due and payable when the Work is fully completed.
- 5.3.2** In making final payment, the Owner waives all claims except for outstanding liens; improper workmanship or defective materials appearing within one year after the date of Substantial Completion; Work not in conformance with the Contract Documents; any other claims previously made in writing; and terms of any special warranties required by the Contract Documents.
- 5.3.3** In accepting final payment, the Contractor waives all claims except those previously made in writing and which remain unsettled.

**ARTICLE 6
CHANGES IN THE WORK**

- 6.1 CHANGE ORDERS.** Changes in the Work which are within the general scope of this Contract may be accomplished by Change Order without invalidating this Contract. A Change Order is a written instrument, issued after execution of this Contract and signed by the Owner and Contractor, stating their agreement upon a change and any adjustment in the Contract Price and/or the date of Substantial Completion. The Contractor shall not be obligated to perform changed Work until the Change Order has been executed by the Owner and Contractor.
- 6.2 COSTS.** An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:
- 6.2.1** Unit prices as set forth in this Contract or as subsequently agreed (but if the original quantities are altered to a degree that application of previously agreed unit prices would be inequitable to either the Owner or the Contractor, the Unit Prices shall be equitably adjusted);
- 6.2.2** A mutually accepted, itemized lump sum;
- 6.2.3** Time and materials.
- If the parties cannot agree on the price term of a Change Order, then the Change Order will be calculated on the basis of actual time and materials costs incurred. If at the Owner's request the Contractor incurs substantial costs or time investigating a proposed change which is never ultimately made, the Contract Price and/or Substantial Completion Date shall be equitably adjusted by Change Order.
- 6.3 UNKNOWN CONDITIONS.** If in the performance of the Work, the Contractor finds latent, concealed or subsurface physical conditions which differ from the conditions the Contractor reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Contract, then the Contract Price and/or the Substantial Completion Date shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed.
- 6.4 CLAIMS FOR ADDITIONAL COST OR TIME.** For any claim for an increase in the Contract Price and/or an extension in the date of Substantial Completion, the Contractor shall give the Owner written notice of the claim within twenty-one (21) days after the Contractor first recognizes the condition giving rise to the claim. Except in an emergency, notice shall be given before proceeding with the Work. Any change in the Contract Price and/or Date of Substantial Completion resulting from such claim shall be effectuated by Change Order.
- 6.5 EMERGENCIES.** In any emergency affecting the safety of persons and/or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or extension of the date of Substantial Completion on account of emergency Work shall be determined as provided in this Article.

**ARTICLE 7
INSURANCE AND BONDING**

- 7.1 CONTRACTOR'S INSURANCE.** The Contractor shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Contract, whether resulting from the Contractor's operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:
- 7.1.1** workers' compensation, disability benefit and other employee benefit claims under acts applicable to the Work;
 - 7.1.2** under applicable employer's liability law, bodily injury, occupational sickness, disease or death claims of the Contractor's employees;
 - 7.1.3** bodily injury, sickness, disease or death claims for damages to persons not employed by the Contractor;
 - 7.1.4** usual personal injury liability claims for damages directly or indirectly related to the person's employment by the Contractor or for damages to any other person;
 - 7.1.5** damage to or destruction of tangible property, including resulting loss of use, claims for property other than the Work itself and other property insured by the Owner;
 - 7.1.6** bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle;
 - 7.1.7** contractual liability claims involving the Contractor's indemnity obligations; and
 - 7.1.8** loss due to errors or omission with respect to provision of professional services under this Contract, including engineering services.

- 7.2** The Contractor's liability insurance(s) shall be written for not less than the following limits of liability:

Commercial General Liability Insurance

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Agg.	\$2,000,000
Personal & Advertising Injury Limit	\$1,000,000
Fire Damage (any one fire)	\$ 100,000
Medical Expenses, each person	\$ 10,000

Comprehensive Automobile Liability Insurance

Combined Single Limit, each accident	\$1,000,000
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	or
Bodily Injury (per person)	\$1,000,000
Bodily Injury (per accident)	\$1,000,000
Property Damage (per accident)	\$1,000,000

Worker's Compensation & Employer's Liability

Worker's Compensation	Statutory Limits
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Employer's Liability

Bodily Injury by Accident	\$ 500,000 each accident
Bodily Injury by Disease	\$ 500,000 policy limit
Bodily Injury by Disease	\$ 500,000 each employee

Commercial Umbrella/Excess Liability

Each Occurrence	\$4,000,000
Aggregate	\$4,000,000

Professional Liability

Each Occurrence	\$2,000,000
Aggregate	\$2,000,000

7.3 Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies and an Excess or Umbrella Liability policy. The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the Owner. Certificates of insurance showing required coverage to be in force shall be provided to the Owner prior to commencement of the Work.

Products and Completed Operations insurance shall be maintained for a minimum period of at least one year after the date of Substantial Completion or final payment, whichever is earlier.

7.4 PRIMARY INSURANCE. The Contractor's insurance shall be primary insurance as respects the Owner. Any insurance or self-insurance maintained by the Owner shall be excess of Contractor's insurance and shall not contribute with it. Any failure by the Contractor to comply with reporting provisions of the policies shall not affect coverage provided to the Owner and Engineer. Contractor will name Owner as an additional insured.

7.5 ACCEPTABILITY OF INSURERS. The insurance carrier used by the Contractor shall have a minimum insurance rating of A:VII according to the AM Best Insurance Rating Schedule and shall meet the minimum requirements of the State of Illinois.

7.6 OWNER'S INSURANCE. The Owner shall obtain and maintain property insurance in a form reasonably acceptable to the Contractor upon the entire Project for the full cost of replacement at the time of any loss. This insurance shall include as named insureds the Owner, Contractor, Engineer, Subcontractors and Subsubcontractors. This insurance

shall insure against loss from the perils of fire and extended coverage, and shall include "all risk" insurance for physical loss or damage including without duplication of coverage, at least: theft, vandalism, malicious mischief, transit, collapse, false work, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting from defective design, workmanship or material. The Owner shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The Owner shall be responsible for any co-insurance penalties or deductibles. If the Owner occupies or uses a portion of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and the Contractor and to which the insurance company or companies providing the property insurance have consented by endorsing the policy or policies. This insurance shall not be canceled or lapsed on account of partial occupancy. Consent of the Contractor to such early occupancy or use shall not be unreasonably withheld. Upon the Contractor's request, the Owner shall provide the Contractor with a copy of all policies before an exposure to loss may occur. Copies of any subsequent endorsements shall be furnished to the Contractor. The Contractor shall be given thirty (30) days' notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage. The Owner shall give written notice to the Contractor before commencement of the Work if the Owner will not be obtaining property insurance. In that case, the Contractor may obtain insurance in order to protect its interest in the Work as well as the interest of the Engineer, Subcontractors and Subsubcontractors in the Work. The Contract Price shall be increased by the cost of this insurance through Change Order. If the Contractor is damaged by failure of the Owner to purchase or maintain property insurance or to so notify the Contractor, the Owner shall bear all reasonable costs incurred by the Contractor arising from the damage.

7.7 PROPERTY INSURANCE LOSS ADJUSTMENT. Any insured loss with respect to Contractor's Insurance shall be adjusted with the Owner and the Contractor and made payable to the Owner and Contractor as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause. Upon the occurrence of an insured loss, monies received will be deposited in a separate account; and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with the dispute resolution provisions of this Contract. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to the dispute resolution provisions of this Contract.

7.8 WAIVER OF SUBROGATION. The Owner and Contractor waive all rights against each other, the Engineer, and any of their respective employees, agents, consultants, Subcontractors and Subsubcontractors, for damages caused by risks covered by insurance provided in Paragraph 7.6 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such Contractor's Insurance held by the Owner and Contractor as trustees. The Contractor shall require similar waivers from all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements. The Owner waives subrogation against the Contractor, Engineer, Subcontractors and Subsubcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion. If the policies of insurance referred to in this Paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

- 7.9 BONDS.** The Contractor shall furnish bonds covering faithful performance of the Contract, and payment of the obligations arising thereunder. Bonds may be obtained through the subcontractor's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to 100% of the Construction Price. The Contractor shall deliver the required bonds to the Owner at least three days before commencement of any Work at the Project site.
- 7.10 INDEMNIFICATION.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its consultants (if any), and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 7.10.

ARTICLE 8 TERMINATION

- 8.1 TERMINATION BY THE CONTRACTOR.** Upon thirty (30) days' written notice to the Owner, the Contractor may terminate this Contract for any of the following reasons unless such matter is cured within 30 days after such notice (provided, however, that if such default is not capable of cure within such thirty (30) day period, that period shall be extended to the extent necessary so long as the defaulting party is exercising reasonable diligence to cure such default):
- 8.1.1** if the Work has been stopped for a thirty (30) day period through no fault of the Contractor and not including weather delays;
 - 8.1.2** if the Owner materially delays the Contractor in the performance of the Work;
 - 8.1.3** if the Owner otherwise materially breaches this Contract; or
 - 8.1.4** if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with paragraph 3.5 of this Contract.
 - 8.1.5** if the Owner files a petition seeking protection from creditors, or has filed against it an involuntary petition for bankruptcy protection, under the United States Bankruptcy Code; makes an assignment for the benefit of creditors; or otherwise becomes the subject of receivership, conservatorship or such similar proceedings.

Upon termination by the Contractor in accordance with this paragraph, the Contractor shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost or expense in connection with the Work, plus all reasonable demobilization costs actually incurred by the Contractor.

8.2 TERMINATION BY THE OWNER. Upon thirty (30) days' written notice to the Contractor, the Owner may terminate this Contract for any of the following reasons unless such matter is cured within 30 days after such notice (provided, however, that if such default is not capable of cure within such thirty (30) day period, that period shall be extended to the extent necessary so long as the defaulting party is exercising reasonable diligence to cure such default):

8.2.1 if the Contractor utilizes improper materials and/or inadequately skilled workers;

8.2.2 if the Contractor materially delays the performance of the Work;

8.2.3 if the Contractor does not make proper payment to laborers, material suppliers or Subcontractors;

8.2.4 if the Contractor persistently fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or

8.2.5 if the Contractor otherwise materially breaches this Contract.

Upon termination by the Owner in accordance with this paragraph, and subject to Section 1.2 hereof, the Owner shall be entitled to recover from the Contractor payment for any proven loss, cost or expense in connection with completion of the Work, including, but without limitation, all reasonable transitional costs, and/or increased costs relating to securing warranty coverage from the replacement contractor for Work performed by the Contractor.

ARTICLE 9 DISPUTE RESOLUTION

9.1 NEGOTIATION. If a dispute arises out of or relates to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions by their appointed representatives. If settlement does not result, principals of both the Owner and Contractor shall meet in person to endeavor to settle the dispute. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to arbitration. The location of any mediation or arbitration shall be Chicago, Illinois. Once one party files a request for mediation with the other contracting party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request.

9.2 ARBITRATION. Any controversy or claim arising out of or relating to this Contract or its breach not resolved by mediation, except for claims which have been waived by the making or acceptance of final payment, shall be decided in Chicago, Illinois by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, unless the parties mutually agree otherwise. The arbitration award shall be final, and judgment upon it may be confirmed in any court having jurisdiction. The parties agree that all parties necessary to resolve a claim shall be parties to the same arbitration proceeding, or to consolidated arbitration proceedings.

9.3 WORK CONTINUANCE. In the event of any dispute, the Contractor shall continue to perform the Work and maintain its progress pending final determination of the dispute, provided the Owner places a sum equal to 150% of the amount in dispute in an escrow account, reasonably satisfactory to both parties, which specifies that the escrow agent

shall distribute the escrow sum between the parties in accordance with any agreement, arbitration award or court judgment entered resolving the dispute..

- 9.4 REQUIRED IN SUBCONTRACTS.** The Contractor shall include the provisions of this Article 9 in all Subcontracts into which it enters.

ARTICLE 10 MISCELLANEOUS PROVISIONS

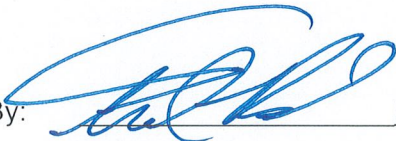
- 10.1 LIMITATION OF LIABILITY.** The Owner acknowledges that the Contractor is a limited liability company and agrees that any claim made by the Owner arising out of or pertaining to this Contract shall be made against only the Contractor and not against any member, manager, director, officer, employee or agent of the Contractor or any other company affiliated with the Contractor.
- 10.2 CONSEQUENTIAL DAMAGES.** Notwithstanding anything to the contrary in this Contract, in no event shall the Contractor or any of its Subcontractors be liable for consequential loss or damage, including but not limited to loss of use or profits, and the Owner hereby releases the Contractor and its Subcontractors from any such liability.
- 10.3 ASSIGNMENT.** Neither party to this Contract shall assign the Contract as a whole without written consent of the other, except that the Owner may collaterally assign this Contract to a lender if required to secure financing for this Project.
- 10.4 GOVERNING LAW.** This Contract shall be construed in accordance with and governed by the laws of the State of Illinois, without application of its conflicts-of-laws provisions.
- 10.5 SEVERABILITY.** The partial or complete invalidity of any one or more provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.
- 10.6 NO WAIVER OF PERFORMANCE.** The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Contract, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.
- 10.7 TITLES.** The title given to the Articles of this Contract are for ease of reference only and shall not be relied upon or cited for any other purpose.
- 10.8 EXTENT OF AGREEMENT.** This Contract is solely for the benefit of the parties, and no one is intended to be a third-party beneficiary hereto. This Contract represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. The obligations in this Contract shall survive its termination or completion.
- 10.9 NOTICES.** Any written notice required hereunder shall be deemed to have been duly served, if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, then on the day of actual delivery, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice, then on the day which is five (5) business days after deposit in the US Mails. As to the Owner, notices shall issue to:

As to the Contractor, notices shall issue to:


Burke, LLC
9975 West Higgins Road
Suite 600
Rosemont, Illinois 60018

Executed:

City of Blue Island

By:  Date: 12/12/23
Mayor

Burke, LLC

By:  Date: 11/29/23
Principal